

PT 01-45

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

ASSOCIATION
HOUSE OF CHICAGO,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 00-PT-0062
(98-16-1330)
P.I.N: 16-02-411-011, *et al.*

RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCE: Mr.. Leo Aubel of Mandel, Lipton & Stevenson on behalf of the Association House of Chicago (hereinafter the "applicant").

SYNOPSIS: This matter arises pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on July 27, 2000. Said determination found, in relevant part, that the sixth floor of the improvement situated on real estate identified by Cook County Parcel Index Numbers 16-02-411-011, 16-02-411-015, 16-02-411-016, 16-02-411-026, 16-02-412-001, 16-02-412-002, 16-02-412-005, 16-02-412-006, 16-02-412-007, 16-02-412-013, 16-02-412-014, 16-02-412-015, 16-02-412-016, 16-02-412-018, 16-02-412-019, 16-02-412-020, 16-02-412-021 and

16-02-412-022, and a proportionate amount of the ground underlying the sixth floor,¹ were not in exempt use, and therefore, did not qualify for exemption from 1998 real estate taxes under Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* (hereinafter the “Code”). At issue herein is whether the portions in dispute were “exclusively used for charitable or beneficent purposes ...,” within the meaning of Section 15-65, during the 1998 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on November 10, 1999. Said complaint sought to exempt the entire subject property from 1998 real estate taxes under Section 15-65(a).

The Board reviewed applicant’s complaint and recommended to the Department that “no action” be taken thereon due to insufficient documentation. The Department, however, partially rejected this recommendation by issuing a determination which found, in relevant part, that the portions in dispute were not in exempt use.

Applicant filed a timely appeal to the Department’s determination and later filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that: (1) applicant’s motion be granted; and, (2) the Department’s initial determination in this matter be modified to reflect that the entire subject property, inclusive of the portions in dispute, be exempt from 1998 real estate taxes under Section 15-65(a).

1. The sixth floor shall and its underlying ground shall hereinafter be referred to as the “portions in dispute;” the real estate on which those portions are situated shall hereinafter be referred to as the “subject property.”

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter, and its position therein, are established by its initial determination in this matter, issued by the Office of Local Government Services on July 27, 2000.
2. The Department's position in this matter is, for present purposes, that the portions in dispute are not in exempt use.
3. The Application for Property Tax Exemption, received by the Department on November 17, 1999, indicates that the subject property is: (a) located at 1116 N. Kedzie Ave, Chicago, IL; and, (b) improved with a 6-story, 116,228 square foot office building.
4. Only the sixth floor of this building and a proportionate amount of its underlying ground are at issue herein because all other portions of the subject property are already exempt under terms of the Department's determination.
5. A trustee's deed contained within applicant's original submission to the Department establishes that, applicant, an Illinois Not For Profit Corporation, obtained ownership of the subject property on November 26, 1997.
6. The affidavit of applicant's executive director, Harriet Sadauskas, which applicant submitted in support of its motion for summary judgment, indicates that: (a) applicant is a social welfare agency, duly accredited in accordance with the laws and regulations of the State of Illinois; (b) applicant used all areas of the subject property except the sixth floor to administer its various social service programs, which included addiction recovery support and vocational training for low income individuals, during 1998; (c) applicant used the entire sixth floor as a storage area for

materials that it used in connection with its various programs throughout that time;

(d) applicant needed this on site storage space so that it could have immediate access to necessary program materials.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no genuine issues of material fact in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether applicant's use of the portions in dispute can be linked to its use of other parts of the subject property that are already exempt under terms of the Department's initial determination herein. For the following reasons, I conclude that applicant's use of said portions can be so linked.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that such property is "actually and exclusively used for charitable purposes and not leased or otherwise used with a view to profit." 35 ILCS 200/15-65(a). The statutory requirements for this exemption are that: (1) the property be owned by an entity that qualifies as an "institution of public

charity;” and, (2) the property be actually and exclusively used for charitable purposes.” *Id.*; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968). Only the latter requirement is at issue herein, as the instant partial denial was predicated solely on lack of exempt use.

Such use may be found where applicant proves that it was using the property in question as a storage facility for materials that supported another exempt use. Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). The affidavit applicant submitted in support of its motion proves that it used the entire sixth floor as storage area of the type held exempt in Evangelical Hospitals Corporation. Accordingly, applicant is entitled to have that floor, and a proportionate amount of its underlying ground, exempted from 1998 real estate taxes as a matter of law. Therefore, applicant’s motion for summary judgment should be granted and the Department’s determination in this matter, which appears to have been based on an initial lack of information that applicant cured via the documentation it submitted in support of its motion for summary judgment, should be modified to reflect that the entire subject property be exempt from 1998 real estate taxes under Section 15-65(a) of the Property Tax Code.

WHEREFORE, for all the above-stated reasons, it is hereby recommended that the entirety of real estate identified by Cook County Parcel Index Numbers 16-02-411-011, 16-02-411-015, 16-02-411-016, 16-02-411-026, 16-02-412-001, 16-02-412-002, 16-02-412-005, 16-02-412-006, 16-02-412-007, 16-02-412-013, 16-02-412-014, 16-02-412-015, 16-02-412-016, 16-02-412-018, 16-02-412-019, 16-02-412-020, 16-02-412-021 and

16-02-412-022 be exempt from 1998 real under Section 15-65(a) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

July 30, 2001
Date

Alan I. Marcus
Administrative Law Judge